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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-263
	)	
Consumer Protection and Customer Service	)	

COMMENTS OF THE
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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TABLE OF CONTENTS

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The National Cable Television Association, Inc. ("NCTA") hereby submits its comments in response to the Commission's December 11, 1992 Notice of Proposed Rulemaking, FCC 92-541 ("NPRM") in this proceeding. NCTA is the principal trade association of the cable television industry in the United States, representing the owners and operators of cable systems serving over 90 percent of the nation's 56 million cable households. NCTA's members also include cable programmers, cable equipment manufacturers and other entities affiliated with the cable television industry.

SUMMARY OF COMMENTS

The 1992 Cable Act requires that the FCC adopt customer service standards that are flexible to account for the differences in size, geography, and economies of cable systems. The statute requires that the FCC standards be one manner in which a cable operator "may fulfill" its customer service obligations, but the ultimate process by which a cable operator achieves customer satisfaction is really irrelevant: it is the result that matters. Operators whose customers are satisfied should not be required to meet artificial performance criteria.

The FCC's standards should be a flexible national benchmark by which operators may attempt to improve customer satisfaction. The model standards, as annotated below to provide clarifications arising from the industry's experience to date, promote the flexibility of implementation that is necessary.

If applied with the intended flexibility, the NCTA standards provide a workable national benchmark. But there is nothing in the 1992 Cable Act which suggests that the FCC customer service standards govern all cable operators in the absence of local adoption. In communities that are satisfied with customer service, there is no need for mandatory standards to be enforced by the FCC.

There is also no basis in policy or law to permit local franchising authorities to amend customer service terms in existing franchises before renewal. The experience of cable operators to date shows that ordinances adopted or proposed with little or no input from the cable operator tend to impose expenses with no concern for whether they are offset by a demonstrated need or benefit. A customer service agreement negotiated between the franchisor and the franchisee provides the best route to cost-effective customer standards.

To permit a franchising authority to unilaterally impose customer service standards would nullify three other provisions of the Cable Act. First, Section 632 declares that the FCC standards are one method "by which cable operators may fulfill their customer service requirements." Second, Section 632 also requires that a cable operator agree to customer service requirements that exceed FCC standards. And third, the standards governing franchise renewal contained in Section 626 of the Cable Act are designed to entitle a cable operator to a renewal expectancy partially on the basis of whether its past customer service "has been reasonable in light of community needs," and if its proposal for renewal (including customer service) is reasonable to meet future community needs and interests that are justified by cost. Each of these provisions would be undermined if a franchising authority were allowed to impose whatever customer service standards it deemed appropriate at any time. Those portions of Section 8 of the 1992 Cable Act which preserve the right of franchising authorities and States to pass customer service and consumer protection measures simply codify the power to pass laws of general applicability, which incidentally impose customer service or consumer protection standards on cable operators.

Where a cable operator and local franchising authority have agreed to customer service standards in existing franchise agreements, the Commission should grandfather those standards. As part of the renewal process, the national benchmark should be reviewed and, if appropriate, adopted as part of the franchise renewal process. The majority of cable subscribers will be protected in this way, because the bulk of cable television franchises are either coming up for renewal soon, or have been renewed recently with appropriate customer service requirements.

As with all franchise provisions, however, the cable operator and franchising authority are free to negotiate revisions at any time during the term of the franchise. The flexibility demanded by the specific needs and economics of a wide variety of cable systems requires that franchising authorities be permitted to incorporate customer service standards that are less stringent than those eventually adopted by the FCC.

The FCC should limit the power of local franchising authorities to subject the cable operator to the payment of compensation to situations in which the operator has had a chance to cure the defect in a timely manner. Customer service standards require that the cable operator engage in self-monitoring, and the operator should be encouraged to report failings by allowing the operator a chance to improve. Similarly, franchising authorities should not be permitted to impose any form of punitive damages, which are unrelated to actual loss by subscribers. Such penalties are disfavored by the law, and do not address the best interests of subscribers.

I. CONGRESS INTENDS FLEXIBILITY IN FCC STANDARDS

A. Congress & The FCC Recognized That "Standards" Cannot Be Uniform, And Must Be Flexible

The practical realities of the cable television industry do not permit any strict national customer service standard applicable to all cable systems of all sizes in all locations. In passing the customer service requirements of the 1992 Cable Act, the House Report (from which the statutory requirements were taken) recognized "the difficulty of establishing a uniform set of national standards that can be applied equally to all cable systems, regardless of size, and in all parts of the country, regardless of marketplace characteristics." H.R. Rep. 628, 102d Cong., 2d Sess. at 105 (1992) ("House Report"). The House Report recognized that the NCTA model standards "attempt to address these differences," and concluded that the final "standards should be flexible in nature." House Report at 105.

The Commission, in its NPRM, recognized that in some areas, "even minimal service guidelines may require a level of funding that, with a limited subscriber base, might result in a dramatic increase in rates or a reduction of other services." NPRM at ¶ 18. The NPRM also recognized the need for flexibility in systematic measurement of standards, NPRM ¶ 11 n. 21, installation and service standards, NPRM ¶ 14, and other areas. NPRM ¶¶ 17, 19. The NPRM seeks comment on the proper balance between the imposition of specific customer service requirements (like sufficient staff to meet all new installation or service calls within the NCTA standards) and the "considerable expense to system operators and eventually to consumers [that] may result."

B. Customer Satisfaction, And Not The Procedures Which Create Satisfaction, Is The Ultimate Standard

The motivating force behind Section 8 is Congress's desire to improve customer service where subscribers are dissatisfied with the current service. The only standard that really reflects the effectiveness of a cable operator's customer service is whether subscribers are satisfied. For this reason, the exact procedures by which a cable operator achieves a high level of satisfaction are irrelevant. It is the result that matters.

The statute dictates that meeting the FCC's standards is to be one way in which an operator "may fulfill" its customer service obligations. Yet many operators achieve a high level of customer satisfaction through a wide variety of service practices that are tailored to the particular needs and economies of widely divergent systems. Operators whose customers are satisfied should not be required to meet artificial performance criteria unrelated to cost-effective increases in customer satisfaction. The FCC's customer service standards should be a flexible national benchmark by which those operators who have a demonstrated need for improved customer service may attempt to improve the bottom line of customer satisfaction.

II. THE NCTA STANDARDS ARE FLEXIBLE TOOLS

A. NCTA Standards Define Processes As Tools Useful In Improving Customer Satisfaction By Focusing On Usual Areas Of Concern: Telephone Accessibility; Convenient Hours; Keeping Appointments

NCTA's Customer Service Standards were adopted Feb. 14, 1990 as an industry-wide commitment to providing high quality service to cable customers. The Standards were drafted by a special task force of senior operations executives within the cable industry, including representatives of MSO's known for quality service and regularly recognized for excellence. As detailed below, the standards are intended to be sufficiently flexible to permit modification when the cost of meeting a particular standard exceeds the anticipated improvement to customer service.

We will detail below the meaning of the customer service standards. They are aggressive: the industry has invested tens of millions of dollars to meet the quantitative standards, and an incalculable amount to meet the qualitative standards. For example:

- Comcast has incurred costs of approximately $4.19 million in telephone equipment and personnel to improve service to approximately 1.7 million subscribers [$2.46/sub].
- TeleCable Corporation employs contractor technicians on an as-needed basis to meet the NCTA standards for installation and service at a 43% increase in hourly labor cost.

Other operators report comparable startup and annual expenditures to meet NCTA standards.

The rate at which cable systems are adopting the NCTA standards and achieving compliance is further evidence of just how demanding the standards are:

	INITIAL APPLICATIONS	RENEWALS	TOTAL
1990	76	0	76
1991	768	20	788
1992	472	649	1,121
TOTAL	1,316	669	1,985

This data shows that, contrary to the suggestions of some, the NCTA standards are neither simple nor easily achieved.

B. NCTA Standards Retain Flexibility Because They Tailor Processes (and Measurements) To Community Needs

To answer the Commission's specific questions about the NCTA standards, we have annotated below each guideline which benefits from illustration. These annotations reflect clarifications arising during industry implementation of the standards since 1990. The clarifications promote the flexibility needed in the adaptation of the standards to particular community needs.

1. OFFICE AND TELEPHONE AVAILABILITY

A. Knowledgeable, qualified company representatives will be available to respond to customer telephone inquiries Monday through Friday during normal business hours. Additionally, based on community needs, systems will staff telephones for supplemental hours on weekdays and/or weekends.

Note 1. A system may assure the "knowledge" and "qualifications" of company representatives through a specific training program.

Note 2. Supplemental hours shall be provided if justified by demonstrable community needs, after accounting for the cost of meeting those needs.

B. **Under normal operating conditions, telephone answer time by a customer service representative, including wait time, and the time required to transfer the call, shall not exceed 30 seconds.**

Those systems which utilize automated answering and distributing equipment will limit the number of routine rings to four or fewer. Systems not utilizing automated equipment shall make every effort to answer incoming calls as promptly as the automated system.

This standard shall be met no less than ninety percent of the time measured on an annual basis.* [*In certain smaller cable systems with fewer than 10,000 subscribers, systematic measurement of compliance with some of these standards (e.g., telephone answering time) will not be cost effective and should not be expected).]

C. **Under normal operating conditions, the customer will receive a busy signal less than three percent of the total time that the cable office is open for business.**

Note 1. The 30 second "answer time" does not include ring time, which is governed by a separate standard.

Note 2. A system need not purchase a PBX, telephone sequencer, or similar device in order to meet the telephone standard unless the purchase is cost-effective for the system. The quantitative standards stated presume that an operator has equipment and software in place capable of making the measurement, but the standards do not require the purchase of equipment solely for the sake of making measurements. An operator with existing equipment (e.g., a PBX) which may make comparable measurements is not required to replace that equipment. For example, automatic equipment which reports "average speed of answer" within 20 seconds 80 percent of the time is comparable to the 30 second standard, and need not be replaced.

Note 3. Some ARUs currently in use report answer time in only 30 second increments, beginning with the first ring of the cable operator's phone. The time measured for total answer time thus includes the time during which the operator's phone is ringing. Systems using this type of equipment may deduct 10 seconds from "answer time", reflecting a conservative estimate of time for three rings, in measuring compliance with the 30 second standard.

Note 4. "Normal operating conditions" for purposes of the telephone answering standards are measured only during regular, posted hours of the normal work week for the office in question. Otherwise, an operator would face a disincentive to providing any "skeleton" staff during non-posted or extended hours. For example, if an operator has one CSR available from 11 p.m. until 7 a.m., who is unable to answer one of five calls in one hour, that operator will fall short of the 90 percent standard for that particular hour. If calls during the extended hours could not be handled by the reduced staff within the standards, the cable operator would have motive simply to eliminate such discretionary service hours. See also below, Note 3 to section II.B.2.B (response time for service interruptions and service problems measured during posted hours of the normal work week).

Note 5. "Normal operating conditions" under this Section do not include Acts of God or other circumstances beyond an operator's reasonable control. The timing of outages due to automobile and construction-related accidents, rolling brownouts or lightening strikes are not considered predictable or within an operator's control. See also below standard 2.A, Note 2 ("Normal operating conditions" do not include promotions which succeed better than planned).

Note 6. "Rings" are measured on the system side of the telephone, and will not include "phantom rings" heard by the caller but not received by the system. For example, a caller hears one ring before the LEC switches the call to a system's Premises Business Exchange, or PBX.

Note 7. Automated Response Units (ARU's) are permissible means for answering calls. Our members report that more than 20% of customers' needs -- such as account status and billing inquires -- are met by an ARU. Consequently, time spent working through a menu of an ARU does not count against response time.

Note 8. Telephone service may be measured on an annual basis for any period of twelve consecutive months. For example, a typical system might begin measurements with the month in which an ARU is installed.

D. Customer service center and bill payment location will be open for transactions Monday through Friday during normal business hours. Additionally, based on community needs, cable systems will schedule supplemental hours on weekdays and/or weekends during which these centers will be open.

Note 1. Normal business hours may vary with the location. For example, mall hours may prevent one bill paying location from opening as early as another location in the same community.

Note 2. "Normal business hours" means only regular, posted hours for the office in question.

Note 3. Supplemental hours shall be provided if justified by demonstrable community needs, after accounting for the cost of meeting those needs.

2. INSTALLATIONS, OUTAGES AND SERVICE CALLS

Under normal operating conditions, each of the following four standards will be met no less than 95% of the time measured on an annual basis.

A. Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are up to 125 feet from the existing distribution system.

Note 1. "Normal operating conditions" do not include circumstances beyond the operator's control, such as bad weather and lack of essential cooperation by third parties (e.g. utilities performing makeready of poles, landlord granting consent, government granting permits, etc).

Note 2. "Normal operating conditions" do not include promotions which succeed better than planned. Otherwise, operators will be deterred from running experimental promotions which provide substantial savings to customers, such as installation or package discounts. "Instant installs", for example, were far more successful when first introduced than was expected. With more operating experience, their success rate might be reasonably predicted. However the success of some pay-per-view events cannot be reasonably predicted.

Note 3. Customers frequently request installation outside of the 7 day window, for example, by calling 30 days before an expected move-in date. These do not count against a system's performance.

Note 4. Delays in installing customers who fail to make the necessary deposits, or are in arrears, do not count against a system's performance.

Note 5. Customers who fail to appear at the requested installation date do not count against a system's performance. Similarly, operators whose policies prevent entry to premises left in the care of a minor should not have that installation failure count against system performance.

Note 6. Underground installations are not considered standard because of the frequent need for municipal permits and specialized trenching equipment.

B. **Excluding those situations beyond the control of the cable operator, the cable operator will respond to service interruptions promptly and in no event later than 24 hours. Other service problems will be responded to within 36 hours during the normal work week.**

Note 1. A "service interruption" or outage is defined as cable off in all television sets in the home.

Note 2. A "service problem" includes nonfunctioning additional outlet, broken converter, or a snowy channel.

Note 3. The "normal work week" is measured during regular posted hours of the office in question. Otherwise, an operator would be penalized for putting a technician on duty, for example, on Sunday, to service some (but not all) service calls.

Note 4. "Situations beyond the control of the cable operator" include outages caused by automobile and construction-related accidents, severe weather, such as lightning strikes, high winds, ice storms, and the like. In these situations, the operator is expected to take prompt action to restore service, but it is not expected that the operator will be able to respond to each subscriber's particular service interruption within the standards.

Note 5. Customer requests for service calls outside of the 24/36 hour window do not count against a system's performance. Customers frequently schedule service calls outside of the 36 hour response window. For example, a Thursday caller frequently prefers a Saturday service call to a Friday, but the Saturday appointment may fall outside of the 36 hour window.

Note 6. A system which dispatches a truck to the site but is unable to obtain entry may place a doorhanger and consider the response closed until further customer contact.

Note 7. Systems which troubleshoot over the telephone may consider a phone call discussion with a qualified employee to be a "response" to outage or service calls.

C. **The appointment window alternatives for installations, service calls, and other installation activities will be (a) morning, (b) afternoon, or (c) all day during normal business hours. Additionally, based on community needs, cable systems will schedule supplemental hours during which appointments can be set.**

Note 1. The purpose of this rule is to inform the subscriber of the approximate time of the call, in order to minimize inconvenience. Not every subscriber will have a choice between an AM or PM appointment on a given day, because of prior scheduling conflicts.

Note 2. Supplemental hours shall be provided if justified by demonstrable community needs, after accounting for the cost of meeting those needs.

D. **If, at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time which is convenient for the customer.**

Note 1. A phone call placed but unanswered or busy constitutes an "attempt to contact" a customer when a technician is running late.

Note 2. Once the technician arrives at an appointed residence for outage or service calls, completion of that task has priority over the making of phone calls to notify customers scheduled for subsequent appointments.

3. **COMMUNICATIONS, BILLS AND REFUNDS**

A. **The cable company will provide written information in each of the following areas at the time of installation and at any future time upon request:**

- **products and services offered**
- **prices and service options**
- **installation and service policies**
- **how to use the cable service**

B. **Bills will be clear, concise and understandable.**

C. **Refund checks will be issued promptly if possible, but no later than the earlier of 45 days or the customer's next billing cycle following the resolution of the request, and the return of the equipment supplied by the cable company if service is terminated.**

D. **Customers will be notified a minimum of 30 days in advance of any rate or channel change, provided the change is within the control of the cable operator.**

Note 1. A system may add a channel without notice subject to restrictions on free previews of certain pay services.

Note 2. Except for free preview notices governed by separate FCC rules, notice need not be by individual mailing, but may be by advertisement, barker channel, newspaper or other media.

Note 3. Thirty-day advance notice is not required for rate decreases, discounts, or changes in rates for pay-per-view services.

Note 4. This 30 day notice provision is preemptive of provisions calling for greater notice, under the terms of Section 623(a) and 636 of the Cable Act.

* * * * *

NCTA's Standards were never intended to be static. Their preamble promises that "the industry will evaluate them on an ongoing basis and adjust them to reflect changing circumstances." It is obviously possible to formulate standards which are more demanding, but they will also be more costly. There is a trade off in each criteria. Service calls to remote rural communities sustained by technicians riding a "circuit" cannot always be completed in 36 hours without having additional staff. The cost to rent and staff an office in a modest community is substantial: In a 1992 Missouri commercial impracticability proceeding, for example, the cost of a modest (750 sq. ft.) local business office was established at:

(1) $4,250/mo., including rent, cleaning, trash, water, computer terminals, phone and data lines, power, sewage, supplies, maintenance, employee wages and capital amortization; plus

(2) $20,000 startup capital costs including signs, cable drops, phone lines, computer terminals, office equipment. Amortized: $250/mo.;

for a total of $4,400/mo. Yet such offices can have remarkably low walk-in traffic, and create a significant and needless rate burden in small communities with access to neighboring business offices or toll free lines. A PBX costs from about $50,000 up to $200,000. Although some better PBX devices come with monitoring capability, others require software packages costing from $13,000 to $58,000, and possibly additional hardware which costs $5,000 and up. An ARU/PBX costs from $65,000 to serve a 48,000 subscriber system to between $85,000 and $110,000 to serve a system with 80,000 subscribers.

Similarly, it is extremely costly to provide daytime staffing levels during peak evening viewing hours. It would be particularly unfair to compel such staffing when neither broadcasters, telephone and electric utilities, nor any other regulated service industry, is required to maintain daytime staffing levels into the night, even though more of their customers are likely to be using residential services in the evening. As one more example, the industry has invested substantially in the record keeping apparatus designed to document compliance with NCTA standards. These records are and should remain open for inspection by franchising authorities. To change them -- even slightly -- can impose major capital equipment costs without corresponding effect on service to the customer. Such costs ultimately will be borne by cable customers, and may be disproportionate to the benefits when spread over a small subscriber base.

The Commission should resist efforts to use major market experiments (like Denver and Los Angeles) as models for the nation. In Los Angeles, for example, the city board of communications has imposed orders on Century Communications that require automatic subscriber credits for outages of one channel, regardless of cause; require one month of credit for any missed service appointment; require 24 hour telephone and technical service; and preclude the use of ARU's in Century's efforts to render prompt telephone service. These standards, which cost Century an estimated $1.5 million per year in additional personnel and related costs alone, would put many cable systems out of business. Just as major market franchises proved uneconomic "blue sky" during the franchise wars, unrealistic customer service standards today would drive up costs at the very time the Commission is trying to constrain prices and spur efficiencies.

III. THE NCTA STANDARDS SHOULD BE A NATIONAL BENCHMARK IF THEY ARE APPLIED WITH THE FLEXIBILITY INTENDED BY CONGRESS AND BY THE STANDARDS THEMSELVES

NCTA believes that its model standards can and should be used as a national benchmark, from which the standards for each community desiring improvement may be tailored to meet local needs and to account for the economics of that cable system.

The NCTA standards permit the tailoring of customer service requirements to the needs of each particular community. For example, the requirement of "supplemental hours" for telephone and walk-in service (as clarified by the annotations) applies only when the added service is supported by demonstrable community needs, and is cost-justified. Similarly, the telephone answer time standards contain the caveat that measurement of compliance may not be cost-effective in smaller cable systems. The flexibility of these standards encourages each franchising authority and cable operator to carefully scrutinize each requirement, and to adopt local standards that lead to the most cost-effective level of customer service for the community.

A. If The Community Is Satisfied, There Is No Need For Mandatory Standards To Be Independently Enforced By The FCC

We see no basis in the 1992 Cable Act to conclude that the FCC customer service standards become effective for all cable operators absent local adoption. In fact, the flexibility needed to address local needs precludes federal standards implemented by default. The FCC's primary role after establishing the standards should be to monitor the industry and to adjust the standards if, after adequate time for implementation, the standards appear to be inadequate.

B. Standards May Not Be Unilaterally Imposed Or Exceeded By Franchising Authorities

The NPRM asks whether a franchising authority may impose new customer service requirements on a cable operator during the franchise term. Both policy and the statute, however, strongly prohibit unilateral amendment of customer service terms in existing franchises, and permit the adaptation of new standards only as part of franchise renewal or otherwise by agreement.

1. Policy

The practical concern of cable operators is that unilateral action by franchising authorities tends toward excess, not cost effectiveness. Recent industry experience shows that ordinances adopted or proposed by franchising authorities, with little or no opportunity for the cable operator to participate, tend to impose costly burdens without regard to the balance between these costs and the demonstrated need for or benefit from the regulations. For example,

- In a widely publicized instance, Birmingham, Alabama in 1986 passed a comprehensive ordinance governing franchise renewal which would have required a state-of-the-art two-way institutional network, several dedicated leased-access channels, payment of a $100,000 application fee, plus almost $1 million of the city's consultant costs (over $14 per subscriber for the cash payments alone), all without consideration of the needs of the community or the ultimate effect of these costs on subscriber rates or the cable system's profitability (see Broadcasting Magazine, May 5, 1989 at 66).

- In 1990, the City of Sacramento, California proposed an ordinance regulating customer service (and nothing else). Even after prolonged discussion with the local operator, as adopted in 1992 the ordinance imposes annual costs of $100,000-$150,000 just to produce required reports to the city. The Sacramento system might be able to pass those costs on to its large subscriber base (approximately 200,000), but the same intensive reporting requirements would clearly threaten the viability of smaller systems.

- In 1992, Brownwood, Texas, enacted a boilerplate ordinance, recommended by its consultant, which imposed significant record keeping, reporting, and customer service obligations, as well as other requirements, all <u>before</u> the City concluded any ascertainment of community needs and determined what cost those requirements would impose on the cable operator and, ultimately, its approximately 9,500 subscribers.

These examples illustrate the trend of local governments to overreach when adopting unilateral ordinances without considering the ultimate cost of regulations to consumers.

A negotiated agreement as to customer service, carefully thought through by franchisor and franchisee, is the best solution. The cable operator will be in the best position to estimate the cost of meeting a particular service requirement. The franchising authority will be able to compare demonstrated community needs with the impact of those costs on the subscriber base. Together, the operator and franchising authority should be able to determine whether the cost of meeting a certain customer service standard will be detrimental to subscriber rates or other services, to tailor the standards accordingly, and to agree to a